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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,611	12/08/2000	Waheguru Pal Singh	LYNN/0120	4196

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P.O. Box 1612  
Cypress, TX 77410-1612

EXAMINER

QAZI, SABIHA NAIM

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 05/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/733,611	SINGH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sabiha Naim Qazi	1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 05 March 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-11 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-11 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> . | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Claims 1-11 and 17 are pending.

No claim is allowed.

Response filed in paper no. <sup>7</sup>8 dated 3/5/02 with the affirmation of elected invention is hereby acknowledged. Amendments are entered. Rejections are withdrawn because arguments are found persuasive. New rejections are as follows.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 1-11 and 17 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "comprising" cited in claims is inclusive and fails to exclude unrecited steps. The use of the term comprising to introduce claimed structure means that the ingredients covered by these claims may involve more elements than those positively recited. *Ex parte Gottzein* et al., 168 USPQ 176 (PTO Bd. App. 1969). Comprising

leaves the claim open for inclusion of unspecified ingredients even in major amounts.

*Ex parte Davis et al.*, 80 USPQ 448 (PTO Bd. App. 1948).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lokkesmoe et al. (US Patent 5,674,538) and Huber, Arthur Elmer (US Patent 4,013,581). Lokkesmoe teaches a method of controlling microbial growth in aqueous stream by using percarboxylic acid, which embraces applicant's claimed invention. See the entire documents especially lines 34-67, col. 4; lines 18-67, col. 6; examples and claims of the US '538; lines 5-50 and lines 64-68, col. 2; lines 5-17 and lines 54-59, col. 3; lines 48-68, col. 5; lines 1-19, col. 6; see examples 1 and 3 and claims of US 4,013,581. Huber teaches a bleach tablet composition containing solid dipercarboxylic

Art Unit: 1616

acid such as diperazelaic acid, which is a dipercarboxylic acid and specifically claimed in instant claim 7.

3. Instant claims are drawn to sterilizing solution, which comprises storing dry solid comprising one or more dicarboxylic acid, and then dissolving said solid carboxylic acid into water. Instant claims differ from the reference in dissolving a solid acid in water.

It would have been obvious to one skilled in the art to be motivated at the time of invention to prepare additional beneficial antimicrobial composition especially when prior art teaches the antimicrobial formulation using a solid dipercarboxylic acid.

Motivation is that prior art teaches solid peroxydicarboxylic acid such as Diperazelaic acid for preparing tablets where diperoxyacids are satisfactorily stabilized with sodium sulfate. The method as claimed would have been obvious in view of teachings of the prior art.

After solution is prepared the activity of the solution is expected to be the same, no matter how it is prepared. Therefore, in absence of any criticality or unexpected results instant invention is considered obvious.

In the light of the forgoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the instant claims would have been obvious within the meaning of 35 U.S.C. 103(a).

Art Unit: 1616

***Telephone Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha N. Qazi, whose telephone number is (703) 305-3910. The examiner can normally be reached on Monday through Friday from 8 a.m. to 6 p.m. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

5/29/02



**SABIHA QAZI, PH.D  
PRIMARY EXAMINER**